

# California Integrated Waste Management Board

## Board Meeting

September 19-20, 2000

### AGENDA ITEM 20

#### ITEM

Consideration Of Board Direction On The Appropriate Method For Making Conformance Findings For Permit Revisions As They Relate To Countywide Siting Elements And Non-Disposal Facility Elements

#### I. SUMMARY

Public Resources Code (PRC) Section 50001 requires the permit review process to include a "conformance finding" step prior to the California Integrated Waste Management Board (Board) concurring in a proposed solid waste facility permit (SWFP). Making a conformance finding requires comparing a proposed permit to a County's Countywide Siting Element (CSE), or a city or county's Nondisposal Facility Element (NDFE) to see if the permit conforms to the applicable planning document. Questions have been raised by local governments, waste management industry, and Board staff as to how the Board should interpret PRC Section 50001 when making a conformance finding; specifically, what is a permit in conformance with in a CSE or NDFE? For example, is identification of the location of a proposed new facility, or facility expansion, enough for the permit to be found "in conformance," or should the facility description in the permit match the facility description in the applicable CSE or NDFE?

This issue was raised at the January 27, 1999 Board meeting. As a result of the discussion, the Board directed staff to prepare an agenda item outlining the issues involved in considering a method for determining conformance, to get input from stakeholders, and to bring the item back to the Board for consideration. Board staff conducted two workshops in Sacramento on this matter - one on March 17, 1999 and another June 24, 1999. An additional issue was raised regarding the purpose of conformance findings at the April 18, 2000, Board meeting relating to when and how the public is noticed about proposed permit revisions.

The purpose of this agenda item is to present to the Board several key issues to be considered in establishing an appropriate method for handling conformance findings, including: "What is the point of a conformance finding?" Specifically, should there be a statewide role in the evaluation of a proposed permit in relation to local planning documents? These issues are discussed in the analysis section below.

## **II. PREVIOUS BOARD ACTION**

At the January 27, 1999, Board meeting during consideration of a landfill permit revision, the Board directed staff to prepare an agenda item considering the issues involved with making conformance findings, and to hold a public workshop to get input from stakeholders regarding this matter. The Board also directed staff in the interim to bring the question of conformance forward for Board consideration on a case-by-case basis when a proposed permit is not consistent with the description in the applicable CSE.

At the April 18, 2000, Board Meeting, again during consideration of a landfill permit revision, the Board directed staff to bring forward the agenda item considering the issues involved with making conformance findings for their consideration at either the July or August, 2000, Board meeting. Board staff was further directed to include a section on conformance findings at the July 11, 2000, Board meeting. This latest meeting was a workshop for Board members that included presentations by Board staff about the permitting process.

## **III. OPTIONS FOR THE BOARD**

- 1) Propose legislation to delete PRC Section 50001, which would delete the conformance finding requirement. If enacted, the Board's corresponding regulations requiring a conformance finding step would also need to be revised accordingly. An alternative version of this option would be to amend the Section by deleting the words "or expand," thereby limiting conformance findings to new facilities.
- 2) Base conformance on "location identification," as defined by the Board. Location identification could mean a facility address, a disposal footprint or some other facility boundary, or a "dot on a map." Such a clarification may require regulations.
- 3) Base conformance (of disposal facility permits) on the effect of the proposed permit on a County's 15-year remaining disposal capacity. The Board's permitting statutes, however, do not currently authorize an objection based on capacity. Staff therefore believes that this option would require a statutory change (and corresponding regulatory changes.)
- 4) Base conformance on description; i.e., the new or expanded facility as described in a proposed permit must be similarly described in a CSE, or NDFE (i.e., using essentially the same standards as in PRC 50000). If the descriptions aren't similar, then require the CSE to be amended and locally adopted prior to concurring with the permit, or the NDFE to be amended, locally adopted, and approved by the Board, prior to concurring with the permit. Examples of what could be considered a description include a facility's maximum daily tonnage, facility capacity, disposal footprint, and permitted waste types. This option might require clarifying legislation and a corresponding change in regulations. Variations of this option include requiring revision of CSEs and NDFEs at the time of the 5-year review, and re-authorizing the Board to determine if a facility would prevent or substantially impair a jurisdiction from meeting the diversion requirements.

#### IV. STAFF RECOMMENDATION

Staff recommends the Board provide clarifying direction regarding which of the above-mentioned four options staff should further pursue and the underlying public policy objectives that the Board seeks to address. Staff will then bring forward to the Board a more detailed recommendation related to the option-direction the Board provides. Depending on the option chosen, staff would continue to make conformance findings following the current process, unless, and until, directed otherwise.

#### V. ANALYSIS

##### Background

Public Resources Code Sections 50000 and 50001 require permits for new solid waste facilities, and expansions of existing solid waste facilities, to be reviewed for their "conformance" with a jurisdiction's solid waste planning documents as part of the permit review process. PRC Section 50000 covered those jurisdictions that were "in the gap" period, i.e., when they did not yet have a Board-approved Countywide Integrated Waste Management Plan, or CIWMP. PRC Section 50001 covers the "post gap" period, i.e., the time after a County has a Board-approved CIWMP. All Counties except one are in this category. In these cases, a conformance finding for a proposed permit for a new facility, or expansion of an existing facility, would require review of the applicable jurisdiction's CSE or NDFE.

To be "found in conformance" during the gap, PRC Section 50000 required any new, or expansion to an existing solid waste or transformation facility which would result in a significant increase in the amount of solid waste handled at the facility, to be identified and described in the applicable planning document. For disposal facilities, that document is the CSE. For nondisposal facilities, such as composting facilities and transfer stations, that document is a NDFE.

To be "found in conformance" post-gap, PRC Section 50001 requires the location of a new or expanded disposal facility to be identified in the County's locally adopted CSE, or Amended CSE; or a nondisposal facility to be identified in a Board-approved NDFE or Amended NDFE. However, if only the location identification of a facility was required (as opposed to a description), there would be no reason to require a conformance finding for expansions. By definition, all existing facilities (which might be expanded) would already be identified, so an additional finding for location information would be unnecessary.

At the January 27, 1999, Board meeting, ambiguities in PRC Section 50001 (a)(1) were discussed during consideration of two landfill permit revisions. Specifically, after the CIWMP is approved for a County, does the facility description (e.g., maximum daily tonnage received) for a new or revised permit have to be consistent with the tonnage description in the CSE, or is location identification alone sufficient for conformance?

A similar ambiguity exists in PRC Section 50001 (a)(2), that portion of the statute that applies to NDFEs. Specifically, does a facility's description (e.g., facility capacity), for a new or revised permit have to be consistent with the facility's description in a NDFE, or is identification alone sufficient for conformance? Examples of what is meant by identification could include the facility's name, location description, type of facility, or the facility's capacity.

The Board concluded that such a policy decision would require input from stakeholders, and a separate agenda item. The Board therefore directed staff to prepare an agenda item on these issues for their consideration at a subsequent Board meeting. The key issues for the Board to consider are discussed below.

### Key Issues

#### 1. What Is The Purpose Of A CSE?

A County's CSE is required under PRC Section 41700 to include a description of the areas to be used for the development of adequate transformation or disposal capacity concurrent and consistent with the applicable City and County Source Reduction and Recycling Elements (SRRE). PRC Section 41701 further requires a CSE to include an estimate of the total transformation or disposal capacity that will be needed for a 15-year period to safely handle solid waste that can't be reduced, recycled, or composted. The remaining disposal capacity of those transformation and disposal facilities existing at the time of the preparation of the CSE is also to be included, as well as identification of areas that may be used for establishing new, or expanding existing facilities, in the case where the total remaining capacity for the County is less than 15 years.

Given these statutory directions, it appears the purpose of a CSE is to demonstrate that a County has a minimum of 15 years of combined disposal capacity, whether in existing facilities or with planned expansions, so that it can safely handle those solid wastes that are not reduced, recycled, or composted.

#### 2. What is the purpose of a NDFE?

Statute requires NDFEs to include a description of any new nondisposal solid waste facilities or expansion of existing facilities that will be needed to implement a jurisdiction's SRRE to meet the diversion requirements of PRC Section 41780, using information that was available at the time the NDFE was prepared (PRC Section 41732.). The NDFE may include the identification of specific locations or general areas for new solid waste facilities that will be needed to implement the jurisdiction's SRRE. Per PRC Section 41733, NDFEs shall also include all nondisposal solid waste facilities and nondisposal solid waste facility expansions, which will recover 5 percent or more of the total volume of material received by the facility. Transfer stations that recover less than 5 percent of the total volume of material received are to be included in the NDFE, but that portion of the NDFE is not subject to Board approval.

Given these statutory directions, it appears the purpose of a NDFE is to identify those nondisposal facilities a jurisdiction believed would assist them in achieving the 25 and 50 percent diversion requirements of PRC Section 41780, at the time the NDFE was prepared.

3. What is the purpose of a Conformance Finding?

Board staff currently make conformance findings by determining consistency between a proposed permit and the applicable CSE or NDFE. The major issues regarding conformance are: a) what does consistency mean; b) does the public have an opportunity elsewhere in the permitting process to provide comments on proposed permits; and c) is it appropriate at the statewide level to use the conformance finding process to evaluate a proposed permit based on its conformance (or not) with the corresponding local planning document?

During the two conformance findings workshops held in 1999, the following ideas for consistency between a proposed permit and the applicable planning document were discussed:

- the facility's location is consistent
- the facility's location, and the waste flow and facility capacity descriptions are consistent
- the facility's full description is consistent
- the proposed permit is consistent with the purpose of the CSE or NDFE, as applicable

Based on input received at both workshops, and again at the July 11, 2000, Board meeting, the overwhelming majority of stakeholders believe that PRC Section 50001 limits the Board's role in determining conformance to looking at the consistency of a facility's location identification in a proposed permit and applicable CSE, or the consistency of a facility's identification in a permit and corresponding NDFE.

4. What Is The Purpose Of A Solid Waste Facility Permit?

The primary goal/purpose of issuing or revising a SWFP is to ensure protection of the public health and safety, and prevention of environmental damage; the long-term protection of the environment shall be the guiding principle (PRC Section 44012). PRC Section 44009 directs the Board to concur or object to the issuance, modification, or revision of a SWFP within 60 days from date of receipt of a proposed permit.

Statute requires a SWFP to:

- authorize the operation of the solid waste facility in accordance with California law and regulations [PRC Section 44014(b)]
- minimize overlap with other regulatory agencies (PRC Div. 30, Part 4, Chapter 1.5)
- specify limitations, prohibitions, terms, and conditions that the enforcement agency determines to be appropriate for the design and operation of a solid waste facility

- maintain consistency with the CEQA analysis for the project (PRC Section 44004, Title 27, California Code of Regulations, Section 21650)

A permit usually first goes through a local permitting process prior to its being submitted to the Local Enforcement Agency (LEA), and eventually the Board, for consideration. In most situations, a new solid waste facility project will require local approval of a land use permit, which usually requires the local entity granting the approval to comply with the California Environmental Quality Act (CEQA). CEQA requires that any document developed for a project be publicly noticed, and that notice be provided to interested local and state agencies. Attachment 1 briefly describes the local approval and notice requirements.

Permitting and Inspection staff estimate that approximately 95-100 percent of projects that require revision to the SWFP for a landfill have gone through a public process, including a local public hearing, while about 80 – 85 percent of permits for transfer stations have had public hearings. This percentage is lower because some transfer station permit revisions are for changes that do not affect the local land use approval. It is estimated that 80 percent of composting facility projects have been subject to local hearings. Composting facilities tend to be associated with existing facilities (landfills or transfer stations), or are located in agricultural or industrial zones that may not require additional local approval prior to being submitted to the Board for consideration.

5. The Current Process For Making A Conformance Finding:

The applicant must include a statement as part of the solid waste facility permit application package that the facility is identified in the CSE or NDFE. The LEA must determine if the package is complete and correct. In making this determination, they must verify that the applicant's statement is included, and that the statement is correct.

Board staff also makes a conformance finding after the application package for a proposed permit has been submitted to the Board. Based on the Board's direction at the January 1999 Board meeting, staff of the Board's Office of Local Assistance (OLA) compares a solid waste facility's description in the pertinent planning document to the facility description in a proposed permit to determine conformance. For a CSE, that information includes:

- Location information
- Remaining disposal capacity
- Rates of waste disposal:  
maximum permitted daily and yearly (tons/cubic yards)  
average daily received (tons/cubic yards)
- Permitted types of wastes

For a NDFE, that information includes:

- Facility identification information
- Facility capacity (tons/cubic yards)
- Anticipated diversion rate or expected diversion rate from the total amount of waste received by the facility
- Participating jurisdictions

## **Findings**

### **Input From Stakeholders:**

Based on input received at the two conformance finding workshops held in 1999, the vast majority of stakeholders were in favor of limiting "conformance" to mean a facility's location must be identified in the corresponding planning document. Participants at both workshops included waste industry representatives as well as local government, both city and county. The majority of the participants believed the public was usually provided an opportunity to provide input on proposed facility/permit changes at the local level, to comply with CEQA.

Stakeholders also believed the CSEs and NDFEs were developed as planning tools, based on information available at the time of preparation, and were never intended to be used as tracking tools that would reflect all changes in facility permits on an on-going basis. They believed statute provided an opportunity to make revisions (as necessary) to local planning documents, in the 5-year review requirement of PRC Section 41770. Revising CSEs and NDFEs to reflect past permit revisions, however, would only be updating the documents after the facility changes had occurred. Current statute requires counties to submit to the Board the results of their 5-year review for Board consideration. However, statute does not specify under what conditions the Board should approve or disapprove a local jurisdiction's findings as to whether or not a planning document needed revising.

The majority of local government representatives also believed that requiring planning documents to be amended whenever a facility was expanded would be unnecessary and burdensome, and contrary to the intent of PRC Section 50001. Specifically, they believed there was no ambiguity in the wording of that Section, and that it clearly limits conformance findings after a County's CIWMP has been approved by the Board, to determining whether the location of the facility is identified in the respective planning document. If the planning document did not identify the location of the facility, then the document would need to be amended prior to the Board's concurring with the permit.

The Amendment Process For CSEs And NDFEs:

Statute requires a CSE amendment to be presented at a Local Task Force (LTF) meeting for review and comment. Once a County has finalized the amendment, it must be noticed for 30 days prior to a local hearing by the County. The County must also submit the amended CSE and accompanying CEQA documentation to all the Cities within the County for their review; the County and a majority of the incorporated Cities with a majority of the incorporated population must approve the document for it to be "locally adopted" (PRC Section 41721.5.) Cities have 90 days to take action to approve or disapprove; no action leads to approval by default [PRC Section 41721.5 (c).] Also, CEQA documentation must be provided, either stating why the previous CEQA documentation is still applicable, or a revised CEQA must be prepared.

The County must submit to the Board verification of the LTF meeting, hearing notices, and resolutions adopting the amended CSE, as well as a resolution from the affected City or the County stating the new or expanded facility is consistent with their general plan (PRC Section 41720.) Board staff will then prepare an agenda item for Board approval of the amended CSE. Local adoption by the County and majority/majority is all that is required, however, for the Board to hear a corresponding permit.

Statute also requires a NDFE amendment to be presented at a LTF meeting for review and comment (PRC Section 41734.) For Regional NDFEs that extend beyond a single County (i.e., Yuba/Sutter and City of Gridley in Butte County), the LTFs of each County must meet and review the amendment. Comments by the LTF shall include an assessment of the regional impacts of potential diversion facilities, and shall be submitted to the City, County, or Regional Agency, and the Board, within 90 days of date of receipt of the nondisposal facility amendment for review and comment. Once a jurisdiction has finalized the amendment, it must be noticed for 3 days prior to a local hearing by the host jurisdiction. The NDFE and any amendments are not subject to CEQA, nor is the NDFE subject to a majority/majority approval. The jurisdiction must submit to the Board verification of the LTF meeting, hearing notice, and resolution adopting the amended NDFE. The amended NDFE must be approved by the Board prior to, or concurrent with, any corresponding permit(s).

Since the January 1999 Board meeting, two amended CSEs have come before the Board: one that added new facilities and described a proposed expansion (Kern), the other described proposed expansions at three landfills (San Bernardino). In that same time period, twenty-one amended NDFEs have come before the Board. Seventeen were adding new facilities to the NDFE, and four NDFEs were amended only to revise facility descriptions. Without the seventeen amendments, the corresponding permits would have been found to be "not in conformance" with the NDFEs because those facilities were not "identified" in the NDFE.

In order to provide background information regarding the development of the conformance finding statutes, Attachment 2 traces the legislative history of the relevant portion of these statutes; Attachment 3 provides the full text of these statutes.



Role Of The Local Task Force:

At the Board's August 2000, meeting in Fountain Valley, the County of Los Angeles requested information on the role of the Local Task Force in the Countywide Siting Element. That information is addressed in Attachment 4 of this agenda item.

Options, and implications of each:

**Option 1. Propose legislation to delete PRC Section 50001.** A few stakeholders believe it is not even necessary to make a finding of conformance once a county is "out of the gap," i.e., has a Board-approved CIWMP. One could logically conclude that the statute should therefore be deleted, and some have actually indicated that this would be their preference. This option would de-couple a solid waste facility permit from a local jurisdiction's planning documents. In other words, there would be no statewide review of local planning for solid waste facility infrastructure with subsequently proposed solid waste facility permits.

Making such a legislative change, however, would take time, so until the change was made, Board staff would continue to process conformance findings in the manner they have been since January of 1999, unless directed otherwise. If such a deletion were enacted, the Board's corresponding regulations would also need to be revised accordingly.

Alternatively, PRC Section 50001 could be amended by deleting the words "or expand." This would clarify that only new facilities would need to be found to be in conformance with a jurisdiction's applicable planning document.

**Option 2. Base conformance on "location identification," as defined by the Board.** Location identification could mean a facility address, a disposal footprint or some other facility boundary, or a "dot on a map." Such a clarification might require regulations. For example, if "location" was defined as the disposal footprint, new regulations would need to be written and all CSEs would need to be revised, as current regulations do not require disposal footprint information to be included in a CSE. The nature of this option is ministerial in scope and may be suitable for delegation to staff.

Basing conformance on the location of a new or expanding facility being identified in the applicable planning document could simplify the current process. Most permits would then be found to be "in conformance," as the majority of permits that come forward for Board consideration deal with permit revisions, as opposed to new facility permits. Under this option, only new solid waste facilities not "identified" in a CSE or NDFE would require an amendment to the respective planning document before the permit could be found to be in conformance. The vast majority of stakeholders favor this option, including LEAs, industry, and local government.

Speakers on the Conformance Finding Panel of the Board's July 9, 2000, Permitting Workshop indicated that they believe the "conformance finding" per se, no longer exists. They believe that the change in statutory language to "location..." and "identified..." in PRC Section 50001 eliminated the "conformance finding" requirement. While a finding of compliance with this section is still required, it is no longer a "conformance finding," i.e., a consistent description is no longer required.

During the period of January 1999 to July 2000, OLA staff prepared at least 50 conformance findings related to CSEs. Of these, nearly half were found to be inconsistent with the permit, usually because of differences in maximum daily tonnage increases in the permit compared to the description in the CSE. With this option, all of the permits could have been found in conformance, depending on the definition of "location." During that same time period, OLA staff prepared at least 30 conformance findings related to NDFEs, eight of which found inconsistencies in the facility capacity information between the permit and NDFE.

**Option 3. Base conformance (of disposal facility permits) on the effect of the proposed permit on a County's remaining disposal capacity.** This option would require a permit applicant to include in the permit application package information on the impacts of the proposed change on the County's remaining 15-year disposal capacity. It is not clear how Counties are currently tracking capacity information, so it is not clear whether such a requirement, applied on a per-permit basis, would present an undue hardship on a County; although remaining capacity is required to be reported in a County's annual report. The Board does not currently track how permit revisions impact a County's remaining disposal capacity. If this option were chosen, most landfill permits would be found in conformance, as most result in increasing a County's disposal capacity.

The Board's current permit statute (PRC Section 44009) contains a limited list of items that would allow an objection. It does not contain any reference to a capacity analysis. Therefore, staff believes that a statutory change would be required to implement this option; corresponding regulatory changes would also be necessary.

Option 3 would also require the Board to determine the basis for a conformance finding for a nondisposal facility-related permit and the applicable NDFE, since the 15-year disposal capacity requirement for a CSE does not apply to NDFEs.

**Option 4. Base conformance on facility description; i.e., the new or expanded facility as described in a proposed permit must be similarly described in a CSE or NDFE. If the descriptions aren't similar, then require the CSE to be amended and locally adopted prior to concurring with the permit, or the NDFE to be amended, locally adopted, and approved by the Board, prior to concurring with the permit.** Examples of what could be considered a description include a facility's maximum daily tonnage, facility capacity, disposal footprint, and permitted waste types. One of the primary issues with this option is how the word expansion should be defined, and what kind of facility expansion would be of concern in relation to a conformance finding. A definition of "expansion" could include a percentage, or absolute increase in tonnage; an increase in maximum or average daily tonnage, or maximum or average yearly tonnage; or an increase in hours or days of operation. This option might require clarifying legislation, and corresponding regulations.

A variation on this option would be to require jurisdictions to revise their applicable planning documents at the time of the 5-year revision to reflect permitting changes to their disposal and nondisposal facilities. This option, however, might also require a change in statute and corresponding new regulations to specify what information in a facility's permit description would need to be included in the applicable planning document.

An additional variation of this option could be to require a proposed permit (new or revised) to be found to be in conformance with a County's diversion strategies and programs before concurring with the permit. For example, if the Board were to determine that the proposed new or expanded facility would "prevent or substantially impair" the jurisdiction from achieving the diversion requirements of PRC Section 41780, then the Board could deny the permit. Such an option would require legislation, as the Board currently does not have the authority to deny a permit based on these grounds.

Prior to 1996, in reviewing a proposed permit, the Board was authorized, among other things, to do the following:

"Until a Countywide integrated waste management plan [CIWMP] has been approved by the board pursuant to this division, if the board determines, based on substantial evidence in the record, that the issuance of the permit would prevent or substantially impair achievement of the diversion requirements prescribed in Section 41780, the board shall object to the permit..."

AB2009 deleted this authority. The supporters of this legislation indicated that it was no longer necessary, as noted below:

"The sponsors, the League of California Cities and the California State Association of Counties, have stated that since AB 2494 disconnected the source reduction and recycling elements (SRREs) from the CIWMPs, about 75 percent of the SRRE's have been submitted and approved by the Board. Taken together with Board guidelines that have been developed over the years, this has effectively ended the need for the Prevent and Impair Provision. In addition, the sponsors maintain that the existence of the Prevent and Impair Provision has been used in two instances by permit opponents and the environmental community to challenge the proposed permits on the ground that issuance "could" (not "would", as the law reads) prevent or substantially impair achievement of the AB 939 diversion goals. Although the Board ultimately approved the permits, the time, effort and resources spent by local government proponents in defeating the challenges could have been better allocated." (Assembly Natural Resources Committee Analysis)

## **VI. FUNDING INFORMATION – N/A**

## **VII. ATTACHMENTS**

1. Typical Local Approvals and Notice Requirements
2. Conformance Finding Statute History
3. Conformance Finding Statutes
4. Role of the Local Task Force in the Countywide Siting Element
5. Resolution 2000-330 (to be provided following Board direction)

## **VIII. CONTACTS**

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